

AO 120 (Rev. 3/04)

<b>TO:</b> Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	<b>REPORT ON THE          FILING OR DETERMINATION OF AN          ACTION REGARDING A PATENT OR          TRADEMARK</b>
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been  
 filed in the U.S. District Court \_\_\_\_\_ of Nevada on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. 2:10-cv-00567	DATE FILED 4/20/2010	U.S. DISTRICT COURT _____ of Nevada
PLAINTIFF Skyzone, LLC		DEFENDANT Flip N Out, LLC
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 5,624,122		
2		
3		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK
1	(See Attached Complaint)
2	
3	
4	
5	

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK /s/ Lance S. Wilson	(BY) DEPUTY CLERK /s/ Sutawnee Duckro	DATE 4/20/2010
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Copy 1—Upon initiation of action, mail this copy to Director    Copy 3—Upon termination of action, mail this copy to Director  
 Copy 2—Upon filing document adding patent(s), mail this copy to Director    Copy 4—Case file copy

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Attorneys for Plaintiff /Pro Hac Vice Pending

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

SKYZONE, LLC, a Nevada limited  
liability company,

Plaintiff,

vs.

FLIP N OUT, LLC, a Nevada limited  
liability company, and DOES 1-20,  
inclusive,

Defendants.

) Case No.

) **COMPLAINT FOR PATENT**  
) **INFRINGEMENT**

Plaintiff SkyZone, LLC ("SkyZone" or "Plaintiff") hereby alleges and  
complains against defendant Flip N Out, LLC, a Nevada limited liability company,  
and DOES 1-20, inclusive, as follows:

**NATURE OF ACTION**

1  
2  
3 1. This is an action for infringement of United States Patent No.  
4 5,624,122 (the "122 Patent"). A true and correct copy of the 122 Patent is  
5 attached hereto as Exhibit A.

6 2. Plaintiff, SkyZone, which is the 122 Patent's exclusive owner and  
7 holder brings this action against Flip N Out, LLC ("Flip") for its willful and  
8 deliberate infringement of, or alternatively, its imminent infringement of, the 122  
9 Patent in connection with Flip's operation and use of a "fun center" in Las Vegas,  
10 Nevada.

**THE PARTIES**

11  
12 3. Plaintiff SkyZone is a Nevada limited liability company with its  
13 principal place of business in Las Vegas, Nevada. Plaintiff owns and operates a  
14 recreational facility in Las Vegas that is covered by the 122 Patent.

15 4. On information and belief, defendant Flip is a Nevada limited liability  
16 company with its principal place of business in Las Vegas, Nevada, which markets  
17 and promotes its operations throughout the United States, including in this District.

18 5. The true names and capacities of defendants named herein as Does 1  
19 through 20, inclusive, whether individual, corporate, associate, or otherwise, are  
20 unknown to Plaintiff, and therefore Plaintiff sues such defendants by fictitious  
21 names. Plaintiff will amend this Complaint to show such true names and  
22 capacities when they have been ascertained. Plaintiff is informed and believes and  
23 thereon alleges that each of these fictitiously named defendants is responsible in  
24 some manner for the occurrences and wrongdoing herein alleged, and that  
25 Plaintiff's injuries and monetary damages as herein alleged were proximately  
26 caused by the aforementioned defendants.

27 6. Plaintiff is informed and believes and thereon alleges that Flip and  
28 Does 1 through 20, inclusive (collectively, "Defendants"), and each of them, were

1 the agents, servants and employees, each of the other, and in contriving,  
2 promoting, doing and suffering the wrongful acts hereinafter alleged, each was  
3 acting in such capacity and within the relative scope of his or her authority.

#### 4 5 JURISDICTION AND VENUE

6 7. This is an action for patent infringement under Title 35 of the United  
7 States Code, and, therefore, this Court has subject matter jurisdiction pursuant to  
8 28 U.S.C. §§ 1331 and 1338(a).

9 8. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400(b)  
10 because Plaintiff resides in this District and has regular and established places of  
11 business in this District. Defendant has promoted its facilities in this District and  
12 has had contacts with Plaintiff in this District. Further, a substantial part of the  
13 events giving rise to the claim at issue occurred in this District.

14 9. This Court has personal jurisdiction over Flip because Flip is located  
15 in this District and by virtue of Flip's business activities within the State of  
16 California and within this District, sufficient minimum contacts exists between Flip  
17 and this forum.

#### 18 FACTUAL ALLEGATIONS

19 10. On or about July 17, 1996, Karin-Maria K. Winkelhorn (the  
20 "Inventor") filed United States Patent application No. 08/683,669 with the United  
21 States Patent and Trademark Office ("USPTO"), disclosing an invention that  
22 involves "a plurality of rectangular trampoline-like channels held together  
23 edgewise by supporting cables with all of the adjacent edges and cables being  
24 covered by padding" (the "122 Application").

25 11. On April 29, 1997, the 122 Patent was issued, entitled "Sport game  
26 and field."

27 12. In or around 2002, the 122 Patent was transferred to SkyZone without  
28 limitation.

1           13. On or about January 2004, SkyZone began developing recreational  
2 centers based on the 122 Patent. The first center was created in Las Vegas, and  
3 opened on or about June 2004. Subsequent facilities have been opened in  
4 Sacramento, California and St. Louis, Missouri, and additional facilities are  
5 currently being developed across the United States.

6           14. Sometime in 2006, Mr. Boyd Tracy Eliason, who, on information and  
7 belief, is the creator, owner, and operator of Flip, came to visit the Las Vegas  
8 SkyZone facility, and met with SkyZone personnel to inquire about the SkyZone  
9 concept.

10           15. Sometime during the summer of 2008, and based on his knowledge of  
11 SkyZone, Mr. Eliason decided to create a facility similar to the SkyZone facility.

12           16. Sometime thereafter, Mr. Eliason developed a website to promote the  
13 Flip concept. On the Flip website, Flip states that his competitor Skymania (which  
14 is a wholly owned subsidiary of SkyZone) had 100,000 visitors in its first year of  
15 business. A true and correct copy of the webpage in which Flip references  
16 Skymania is attached hereto as Exhibit B.

17           17. In or around early 2010, Plaintiff became aware of Flip's existence,  
18 and discovered that Flip had been actively developing a recreational facility that  
19 directly infringes the 122 Patent under 35 U.S.C. §271. The infringing acts  
20 include, but are not limited to, the manufacture, use, and offering for use the  
21 above-identified recreational facility that is covered by the 122 Patent.

22           18. Based on this information, on or about April 2, 2010, Plaintiff sent a  
23 cease and desist letter to Mr. Eliason and to Flip via email and U.S. mail (the  
24 "C&D Letter") advising them of their direct infringement of the 122 Patent. A true  
25 and correct copy of the Letter is attached hereto as Exhibit C.

26           19. On or about April 15, 2010, in a telephone conversation between  
27 SkyZone's counsel and Mr. Eliason, Mr. Eliason acknowledged, on behalf of Flip,  
28 that he had received and reviewed the C&D Letter.

20. As of the filing date of this Complaint, Defendants have failed to respond to the C&D Letter.

21. Based upon the C&D Letter, Mr. Eliason and Flip have now been advised that Flip's actions directly infringe upon the 122 Patent.

22. As a result of Flip's infringement, Plaintiff has sustained damages and will continue to sustain damages as a result of lost profits and diverted customers in the Las Vegas market in an amount greater than the jurisdictional minimum of this Court. As a result of Flip's infringement, Plaintiff has also sustained damages, and will continue to sustain damages to its professional reputation for, among other things, the safety of its recreational facility.

23. Under 35 U.S.C. §284, Plaintiff is entitled to recover from Flip the damages sustained by Plaintiff as a result of Flip's infringement of the 122 Patent. Furthermore, Flip's infringement of Plaintiff's rights under the 122 Patent will continue to damage Plaintiff's businesses, causing irreparable harm to Plaintiff, for which there is no adequate remedy of law, unless enjoined by this Court under 35 U.S.C. §283.

24. Upon information and belief, and based on Flip's acknowledgement of receipt of the C&D Letter, Flip's continuing infringement of the 122 Patent is willful and deliberate, and entitles Plaintiff to additional damages under 35 U.S.C. §284 as well as attorney fees and costs under 35 U.S.C. §285.

### **COUNT I**

#### **Infringement of United States Patent No. 5,624,122**

#### **(Against All Defendants)**

25. Plaintiff hereby incorporates paragraphs 1 through 24 inclusive by reference as though fully set forth herein.

26. This claim is made under the provisions of the patent laws of the United States and, in particular, 35 U.S.C. §271, et seq.

1           27. On April 29, 1997, the United States Patent and Trademark Office  
2       duly and legally issued United States Patent No. 5,624,122 entitled "Sport game  
3       and field."

4           28. SkyZone is the owner, without limitation, of the 122 Patent.

5           29. Defendants have infringed and, on information and belief, continue to  
6       infringe directly, indirectly, contributorily, and/or by inducement, the 122 Patent  
7       by making, using, promoting, offering for sale or use, and/or selling products and  
8       services in this District and elsewhere in the United States, including, without  
9       limitation, the Flip N Out fun center in Las Vegas, Nevada.

10          30. Defendants knowingly, willfully, and deliberately infringed and, on  
11       information and belief, continue to infringe the 122 Patent in conscious disregard  
12       of Plaintiff's rights, making this case exceptional within the meaning of 35 U.S.C.  
13       § 285 and justifying treble damages pursuant to 35 U.S.C. § 284.

14          31. Defendants' actions have caused and will continue to cause irreparable  
15       harm and monetary damage to Plaintiff unless and until Defendants are enjoined  
16       and restrained by this Court from infringing on the 122 Patent.

17  
18                               **PRAYER FOR RELIEF**

19       WHEREFORE, Plaintiff respectfully requests that this Court enter judgment for  
20       Plaintiff and against Defendants as follows:

21           (a) For a judgment for Plaintiff on this Complaint that Defendants have  
22       infringed and continue to infringe the 122 Patent;

23           (b) For preliminarily and permanent injunctions under 35 U.S.C. §283  
24       enjoining Defendants, their agents, officers, directors, employees, successors,  
25       subsidiaries, assigns, and all persons acting in privity or in concert therewith or in  
26       participation with them from any further infringement of the 122 Patent;

27           (c) For a judgment finding that Defendants' infringement was willful and  
28       deliberate, entitling Plaintiff to increased damages under 35 U.S.C. §284;

1 (d) For damages resulting from Defendants' infringement in accordance  
2 with 35 U.S.C. §284;

3 (e) For treble damages in accordance with the provisions of 35 U.S.C.  
4 §284;

5 (f) For judgment finding this to be an exceptional case, and for an award  
6 of Plaintiff's reasonable attorneys' fees under 35 U.S.C. §285;

7 (g) For an award of Plaintiff's interest and costs; and

8 (h) For any such other and further relief to which the Court finds Plaintiff  
9 is entitled under law or equity.

10  
11 **JURY TRIAL DEMAND**

12 Plaintiffs hereby demand a jury trial on all issues so triable.


13  
14 DATED: April 19, 2010

BREEDEN & ASSOCIATES, PLLC  
ADAM BREEDEN

15  
16 By:  #3767  
17 ADAM BREEDEN  
18 Attorneys for Plaintiff SKYZONE, LLC

19  
20 DATED: April 19, 2010

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